

Recruitment and employment within the law

As an employer you must recruit and retain your staff within the law. Here's an overview of the relevant legislation, which you must be aware of. It is your responsibility to keep up-to-date with changes. For more information you are advised to visit the Government websites:

- [Gov.uk: Employing-people](https://www.gov.uk/employing-people)
- [ico.org.uk guide to the general data protection regulation \(gdpr\)](https://ico.org.uk/guide-to-the-general-data-protection-regulation-gdpr)
- [ico.org.uk the employment practices code](https://ico.org.uk/the-employment-practices-code)

Ensure that confidential staff information is stored safely in accordance with the **Data Protection Act 2018**. As an employer you should follow the 'data protection principles'. They must make sure the information is:

- used fairly, lawfully and transparently
- used for specified, explicit purposes
- used in a way that is adequate, relevant and limited to only what is necessary
- accurate and, where necessary, kept up to date
- kept for no longer than is necessary
- handled in a way that ensures appropriate security, including protection against unlawful or unauthorised processing, access, loss, destruction or damage

There is stronger legal protection for more sensitive information, such as:

- race
- ethnic background
- political opinions
- religious beliefs
- trade union membership
- genetics
- biometrics (where used for identification)
- health
- sex life or orientation

The Health and Safety at Work Act 1974 and subsequent amendments require all employers to provide for the health, safety and welfare of their employees.

The Employment Relations Act 2004 is concerned with collective labour law and trade union rights. It implements the findings of the review of the Employment Relations Act 1999.

You should check that your employees are entitled to work in the UK. You could be prosecuted if you employ illegal workers. You can be fined up to £10,000 per worker for employing illegal workers. More information: [Penalties for employing illegal workers](#)

You should check all your employees and must not discriminate against anyone because of their nationality.

The Employment Act 2008 strengthened simplified and clarified key aspects of UK employment law. The Act brought together both elements of the Government's employment relations strategy: increasing protection for vulnerable workers and lightening the load for law-abiding business. It also made provision regarding procedures for the resolution of employment disputes; to provide for compensation for financial loss in cases of unlawful underpayment or non-payment; to make provision about the enforcement of minimum wages

The Employment Act 2002:

- made provision for statutory rights to paternity and adoption leave and pay
- amended the law relating to statutory maternity leave and pay
- amended the Employment Tribunals Act 1996; to make provision for the use of statutory procedures in relation to employment disputes
- amended the law relating to particulars of employment; to make provision about compromise agreements;
- made provision for questionnaires in relation to equal pay;
- made provision in connection with trade union learning representatives;
- amended section 110 of the Employment Rights Act 1996; to make provision about fixed-term work;
- made provision about flexible working;
- amended the law relating to maternity allowance;
- made provision for work-focused interviews for partners of benefit claimants;
- made provision about the use of information for, or relating to, employment and training; and for connected purposes.

The Work and Families Act 2006 extends maternity and adoption pay, the right to request flexible working to carers of adults, gives employed fathers a new right to Additional Paternity Leave. It also helps employers manage the administration of leave and pay as well as benefit from improved communication during maternity leave. [More information about UK legislation.](#)

Holiday entitlement and the law

Almost all workers are legally entitled to 5.6 weeks paid holiday per year (known as statutory leave entitlement or annual leave), although some employers may decide to provide more generous contractual holidays. [More information about holiday rights entitlement.](#)

The regulations apply to all workers whether employed on a full-time or part-time basis, temporary or permanent contract and agency workers.

Working 5 days a week

Most workers who work a 5-day week must receive 28 days paid annual leave per year. This is calculated by multiplying a normal week (5 days) by the annual entitlement of 5.6 weeks.

Working part-time

Part-time workers are also entitled to a minimum of 5.6 weeks of paid holiday each year, although this may amount to fewer actual days of paid holiday than a full-time worker would get.

Holiday entitlements for part-time workers can also be calculated in hours where their number of hours worked per day varies. For example: an employee who works fifteen hours a week which includes two days at six hours per day and one day at three hours is entitled to 84 hours holidays per year -their normal week multiplied by 5.

Getting paid instead of taking holidays

The only time someone can be paid in place of taking statutory leave (known as 'payment in lieu') is when they leave their job. Employers must pay for untaken statutory leave (even if the worker is dismissed for gross misconduct).

If an employer offers more than 5.6 weeks annual leave, they can agree separate arrangements for the extra leave.

Public holidays and the law

There is no statutory entitlement to paid leave for public holidays. Generally, public holidays include bank holidays, holidays by Royal Proclamation and 'common law holidays'. When public holidays in the Christmas and New Year period fall on Saturdays and Sundays, alternative week days are declared public holidays.

Bank or public holidays do not have to be given as paid leave. As an employer you can choose to include these holidays as part of a worker's statutory annual leave. You should ensure that any right to paid time off for public or bank holidays should be included within the terms of the worker's contract. [Information about UK bank holiday dates.](#)

Note: Paid public holidays can be counted as part of the statutory 5.6 weeks holiday entitlement regulations.

As an employer you should ensure that part-time workers are not be treated less favourably than comparable full-timers in regard to their contractual terms. As most bank and public holidays fall on a Monday those staff who do not normally work that day could be disadvantaged. Good practice suggests that such workers should be given a pro rata entitlement of days off in lieu according to the number of hours they work.

For example: an employee who works three days per week is entitled to three fifths of the public holiday entitlement that a full-time worker who works five days per week is entitled to.

[Further guidance on the rights of part-time workers](#)

Providing information on holiday entitlements to workers

Employers are required by law to provide all employees, within two months of commencing employment, with a written statement of employment particulars.

The written statement should contain details of holidays and holiday pay entitlements. These details may also be included in the employee's written contract.

The written statement or contract should contain sufficient detail to enable the employee's entitlement to be precisely calculated, including any entitlement to accrued holiday pay on the termination of employment.

[More information about holidays and other leave](#)

Calculation of holiday entitlements for term time only contracts

This is based on how many hours the employee works on average over the whole year. For example: if the employee works 40 hours a week for 40 weeks of the year, they work a total of 1,600 hours a year. 1600 divided by 46.4 week (52 weeks less 5.6 weeks (statutory entitlement)) = 34.48 hours

- Multiply 34.48 hours x 5.6 weeks = 193.09 hours holiday over the year
- If you wish to convert this to days, divide this number by number of hours worked each day. 'Rounding Up' holiday entitlement – if the entitlement includes a part day, as an employer you can choose to round this up (you CANNOT round it down!).

Employing Agency and casual workers

Employers using agencies to find temporary or permanent workers have certain responsibilities.

Agencies that find staff for other businesses, but pay the staff themselves, are known as 'employment businesses'.

If you take on workers through an employment business, they're responsible for ensuring the workers' rights under working time and minimum wage rules.

[More information about maximum weekly working hours](#)

[More information about the minimum wage](#)

Employers' responsibilities

As an employer, you're responsible for:

- agency workers' Health and Safety (more information at www.hse.gov.uk)
- ensuring they have the same access to shared facilities as other workers
- letting them know about relevant job vacancies in your business

You can stop providing work to an agency worker, as long as they're not employed by you.

Additional rights after 12 weeks

After 12 weeks in the same job, agency workers are entitled to the same terms and conditions as employees doing the same or similar work. This includes:

- pay
- working time, rest periods and breaks
- night work
- annual leave
- time off for antenatal appointments for pregnant workers

For more details, see the Department for Business, Innovation & Skills (BIS) guidance on agency worker regulations. www.bis.gov.uk

Maternity pay and conditions

A pregnant mother is entitled to receive statutory maternity pay from her employer. To qualify she must:

- Have been continuously employed for at least 26 weeks, continuing into the 15th week before baby is due
- Have average weekly earnings of at least the lower earning level
- Still be pregnant at the 11th week before baby is due
- Provide medical evidence to employer at least 21 days before maternity leave is due to commence
- Have actually stopped working to have the baby

[More information and an employer's guide to Statutory Maternity Pay](#)

Ordinary maternity leave

All expectant mothers are entitled to 26 weeks' maternity leave, during which time the contract of employment should continue. There is no qualification period of employment to receive this leave, however the pregnant employee should notify her employer of her intention to take maternity leave by the 15th week prior to expected date of confinement (EWC) or due date. It would be acceptable for you to request proof of her EWC.

This period of maternity leave cannot commence prior to the 11th week before baby is due.

The employee has the right to return to her employment before the 26-week period and should give notice of her expected return date. All women must take two weeks' compulsory maternity leave after the birth of her child/ren.

Additional maternity leave/right to return

Expectant mothers with at least 26 weeks service prior to 15th week before the baby is due, has the right to additional maternity leave totaling 52 weeks, with the right to return to work up to 41 weeks after the birth of her child/ren.

The period of her additional maternity leave is usually unpaid unless you have given any contractual rights to this stated in her contract. Up-to-date details: [Gov.uk: Employing people](#)

Time off for antenatal care

All pregnant employees regardless of length of service or hours of work, are entitled to paid time off for ante-natal appointments. More information: [Working when pregnant – your rights](#)

Protection against unfair dismissal on maternity related grounds

It is unlawful for an employer to dismiss any employee, or select her for redundancy in preference to other employees on the grounds that she is pregnant or has recently given birth.

Paternity leave

Subject to qualification, the right to paternity leave and pay is available to an employee who is the partner of either a woman who has given birth or someone who is adopting a child.

Eligible employees can choose to take a single block of either one or two weeks' paternity leave. They cannot take it as odd days or as two separate weeks. All paternity leave is payable at the Statutory Paternity Pay flat rate, immediately after childbirth.

To qualify they must:

- Have or expect to have responsibility of the child's / children's upbringing
- Be the biological father of the baby and/or the mother's husband or partner (including same-sex partner or civil partner). A partner is someone who lives with the mother of the baby in an enduring family relationship but is not an immediate relative

- Are either one of two parents jointly adopting a child or the partner of someone adopting a child individually
- Have been continuously employed for 26 weeks leading up to 15th week prior to the birth or the week in which the adopter is notified of being matched with a child Note: periods of paternity leave must be completed within 56 days of actual date of birth or the child's placement.

[More information about paternity pay leave](#)

Parental leave and time off for dependents

Time off for family and dependents

Employees are allowed to take time off to deal with emergencies involving dependents. A dependent could be a spouse, partner, child, grandchild, parent or someone else who depends on the employee for care. The employee can take a reasonable amount of time depending upon the situation but there is no set amount of time that can be taken.

Employees with young or disabled children are entitled to take periods of unpaid parental leave. An employee must comply with certain qualification and notification requirements before taking this leave. However, you can agree with employees or their representatives to enhance these requirements where appropriate.

Employees are entitled to 18 weeks' unpaid parental leave for each child up to the child's fifth birthday if:

- They have at least one year's continuous service with you and/or an associated employer
- They have a child under the age of five or have a child who was adopted within the past five years and is under the age of 18
- They have - or expect to have - parental responsibility for the child
- An employee is entitled to 18 weeks' unpaid parental leave up to the child's 18th birthday if their child is entitled to receive disability living allowance

A maximum of 4 weeks can be taken in any one year.

21 days notice must be given of the intention to take parental leave and the leave must be taken in blocks of whole weeks unless the employer agrees otherwise or the child has a disability, in which case individual full days may be taken.

A week's leave is equal to the length of time the employee is normally required to work, e.g. a week's leave is:

- Five days for an employee working Monday to Friday
- Two days for an employee working Tuesday and Wednesday only

Note: The parent doesn't have to be living with the child to qualify. This right applies per child so if an employee has two children, they are entitled to 36 weeks' parental leave (18 weeks per child up to their 5th birthday). The government is in the process of legislating to allow parental leave to be shared between parents.

More information about Parental Leave is available at [Gov.uk: Parental leave](#) or [ACAS: Parental leave](#)

Requests for flexible working conditions

Anyone can ask their employer to work flexibly; however, employees who care for someone (either child of adult) have the legal right to ask for flexible working. The employee has to qualify and the employer does not have to agree to the request.

Flexible working would include, but is not restricted to job sharing, working from home, part time working, compressed hours, flexi-time, annualized hours, staggered hours etc.

Applications for flexible working must be made in writing. The employer must request a meeting with the employee to discuss the application within 28 days and must then make a decision within 14 days of the meeting.

Employees must have worked continuously for the same employer for the last 26 weeks in order to be eligible and only 1 application can be made each year.

[More information about applying for flexible working](#) and the basis on which the employer can reject the application, the process to follow and the employees right to appeal against the decision.

Useful links and information

[Department for Business, Energy & Industrial Strategy](#) - Previously the Department for Business, Innovation & Skills and the Department of Trade and Industry website - for latest news, updates and legislation.

[Gov.uk: Employing people](#) - For more practical advice for businesses including taking on staff, pay and pensions, managing staff, problems and incidents and improving staff performance and many other subjects.

[ACAS](#) - Further information can also be obtained from ACAS (Advisory, Conciliation and Arbitration Service) who produce a range of booklets, leaflets and handbooks giving practical guidance and advice for both employers and employees.